

REMARKS

Favorable reconsideration of this application in light of the preceding amendments and the following remarks is respectfully requested.

No claims having been cancelled and claims 11-16 having been added, the Applicants respectfully submit that claims 1-16 are properly under consideration in this application.

Rejections under 35 U.S.C. § 102

Claims 1 and 6-10 stand rejected under 35 U.S.C. § 102(b) as anticipated by Sillat's German Patent DE 4420621 A1 ("Sillat"). The Applicants respectfully traverse this rejection for the reasons detailed below.

The Applicants respectfully note that the applied reference is written in German and further that no English-language translation has been provided to Applicants. The Applicants, therefore, respectfully maintain that they have not been afforded a full and fair opportunity to understand Sillat's disclosure or to evaluate the Examiner's allegations as to the content and significance of Sillat's disclosure. To the extent Sillat's Fig. 1 may be understood, the Applicants respectfully contend that there is no suggestion that any sensor is "positioned in the manometer 12 with the overflow passage 10" as alleged. Action at 2.

Indeed, to the extent understood, the Applicants respectfully suggest that Sillat's system is primarily pneumatic and relies on the condensation of a separate sensor gas (introduced through valve 14) within a vapor pressure manometer 12.

Further, the Applicants respectfully suggest that the portions of the apparatus identified by the Examiner as relating to "cryogenic fluid distribution" are, in fact, related to monitoring the pressure and/or pressure differential within the reservoir 3 and that the *distribution* is actually achieved through lines 6a and 6b. The Applicants respectfully maintain that *speculation* regarding the operation of Sillat's apparatus is *not* a valid substitute for an identification of specific *textual support* that would guide one of ordinary skill in the proper interpretation of Sillat's Fig. 1. The Applicants respectfully maintain that until the Examiner obtains and provides to the Applicants an English-language translation of the Sillat reference, its use as the primary reference is unwarranted and inappropriate. MPEP § 706.02.

The Applicants respectfully contend, therefore, that the Action has failed to establish with the requisite degree of clarity that Sillat does, in fact, teach "each and every element as set forth in the claim." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Absent the establishment of such a teaching, the present rejection cannot be maintained.

The Applicants respectfully request, therefore, that this rejection be reconsidered and withdrawn accordingly.

Rejections under 35 U.S.C. § 103

Claim 2 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Sillat in view of McCulloch et al.'s U.S. Patent No. 6,016,697 ("McCulloch"). The Applicants respectfully traverse this rejection for the reasons detailed below.

As detailed above, the Applicants respectfully maintain that, contrary to the Examiner's assertion, the Action has not established that Sillat "discloses the invention substantially as claimed," but, in the absence of an English-language translation, MPEP § 706.02, relies on an apparently speculative and largely unsubstantiated interpretation of Sillat's Fig. 1. Action at 3. The Applicants also respectfully suggest that the Examiner has grossly misinterpreted the teachings of McCulloch with regard to the function of the cited LEDs, 274, 276 and 278.

Indeed, as clearly disclosed by McCulloch, *these LEDs are simply indicators* provided on the front of controller 200 and are not used, in any fashion, to *sense* and condition or flow within the distribution lines. McCulloch, col. 7, lines 47-65. The Applicants respectfully maintain, therefore, that McCulloch provides *no teaching or suggestion* with regard to either the suitability or manner in which LED indicators could be modified to act as "an active component for determining if fluid is present in the overflow passage" as required by Applicants' claim 2.

The Applicants respectfully contend, therefore, that the Action has failed to establish that all the claim limitations are taught or suggested by the proposed combination of references and has failed to establish any colorable motivation for making the proposed combination from within those references. The Applicants respectfully maintain, therefore, that the present Action fails to establish a *prima facie* for the obviousness of the claimed invention, *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974), and that this rejection cannot properly be maintained on the present record.

The Applicants respectfully request, therefore, that this rejection be reconsidered and withdrawn.

Claims 3 and 4 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Sillat in view of Maric's U.S. Patent No. 5,142,874 ("Maric"). The Applicants respectfully traverse this rejection for the reasons detailed below.

As detailed above, the Applicants respectfully maintain that, contrary to the Examiner's assertion, the Action has not established that Sillat "discloses the invention substantially as claimed," but, in the absence of an English-language translation, MPEP § 706.02, relies on an apparently speculative and largely unsubstantiated interpretation of Sillat's Fig. 1. Action at 3. The Applicants also respectfully suggest that the Examiner has misinterpreted the teachings of Maric with respect to the positioning and function of the cited temperature sensor 70.

As taught by Maric, temperature sensor 70 is not positioned in a cryogenic flow passage, but is, instead, arranged in an outlet pipe for sensing the temperature of material that has been cooled by exposure to the cryogenic fluid 28 as it passes through a pipe 22 transiting vessel 12 and the cryogenic fluid contained therein. Maric, col. 5, line 66, to col. 6, line 6. The Applicants further suggest that no teaching or suggestion has been identified in Maric that would lead one of ordinary skill to a configuration in which “the active component is positioned within the hole and impinges into the through passage” as recited in Applicants’ claim 4.

The Applicants respectfully contend, therefore, that the Action has failed to establish that all the claim limitations are taught or suggested by the proposed combination of references and has failed to establish any colorable motivation for making the proposed combination from within those references absent inappropriate hindsight guided solely by the Applicants’ disclosure. The Applicants respectfully maintain, therefore, that the present Action fails to establish a *prima facie* for the obviousness of a claimed invention, *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974), and suggests that the present rejection cannot properly be maintained on the present record.

The Applicants respectfully request, therefore, that this rejection be reconsidered and withdrawn.

Claim 5 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Sillat in view of Maric and further in view of McCulloch. The Applicants respectfully traverse this rejection for the reasons detailed below.

As detailed above, the Applicants respectfully maintain that, contrary to the Examiner's assertion and as detailed above, the Action has not established that Sillat, Maric or McCulloch, whether considered singly or in combination, can fairly be said to "disclose the invention substantially as claimed." In particular, the Applicants respectfully maintain that no teaching or suggestion has been identified in the applied references that would guide one of ordinary skill in the art to adapt an indicator light as suggested by McCulloch as the active component of a sensor configured as recited in Applicants' claims.

The Applicants respectfully request, therefore, that this rejection be reconsidered and withdrawn.

New Claims 11-16

The Applicants respectfully submit that new claims 11-16 are fully supported by the original specification, drawings and claims and do not, therefore, represent the introduction of new matter. The Applicants further contend that claims 11-16, drawn to an apparatus for distributing cryogenic liquid to a cooled device, are allowable over the applied references for at least the same reasons as detailed above in addressing the rejections of claim 1-5 and 7-10.

CONCLUSION


In view of the above remarks and amendments, the Applicants respectfully submit that each of the pending rejections have been addressed and overcome, leaving the present application in condition for allowance. A notice to that effect is respectfully requested.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned at the telephone number provided below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge any underpayment or non-payment of any fees required under 37 C.F.R. §§ 1.16 or 1.17, or credit any overpayment of such fees, to Deposit Account No. 08-0750, including, in particular, extension of time fees.

Respectfully submitted,

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